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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

DERRICK CARR, Plaintiff and Appellant, v. VAL VERDE UNIFIED SCHOOL DISTRICT et al., Defendants and Respondents.	E069305 (Super.Ct.No. RIC1614883) OPINION

APPEAL from the Superior Court of Riverside County. Gloria Trask, Judge. Affirmed in part; reversed in part.

Cal-Lawyer and Evan D. Williams for Plaintiff and Appellant.

Aarvig & Associates, Maria K. Aarvig and Diane K. Huntley for Defendants and Respondents.

In a second amended complaint (SAC), Derrick Carr (Carr) sued Val Verde Unified School District (the District) and Catherine Godwin (Godwin). Carr brought three causes of action: (1) sexual harassment; (2) failing to prevent harassment; and

(3) retaliation. The District and Godwin demurred to the SAC. The trial court sustained the demurrer without leave to amend. (Code Civ. Proc., § 430.10, subd. (e).) Carr contends the trial court erred by sustaining the demurrer because Carr sufficiently pled the three causes of action. We affirm in part and reverse in part.

FACTUAL AND PROCEDURAL HISTORY

A. SAC

The facts in this subsection are taken from Carr's SAC. Tomas Rivera Middle School (the School) is part of the District. Godwin was a teacher at the School. Carr was a custodian at the School. In September 2007, a security guard at the School told Carr that Godwin said to the security guard "that she did not trust that 'black man,' in reference to CARR." One day later, Carr met with Godwin. Carr asked why Godwin "would impugn his integrity." Godwin responded by laughing.

On September 2, 2015, Godwin was in her classroom along with Stephanie Nicholls (Nicholls), who was another teacher at the School. Carr entered Godwin's classroom with a vacuum cleaner. Godwin made eye contact with Carr and said, " 'He's a fucking pussy!' " Carr looked at Nicholls and then back to Godwin. Godwin laughed and again said, " 'He's a fucking pussy!' "

Carr complained about Godwin's statements to his local union representative. As a result, from September 2015 through January 2016, the local union representative accompanied Carr when Carr worked in the area of Godwin's classroom. On September 3, 2015, Carr complained about Godwin's statements to the School's principal (the Principal). The Principal said to Carr, " 'I will take a couple of days and

will have a suggestion for you.' " On September 10, the Principal called Carr and suggested that Carr speak to Godwin and inform her that her statements offended him.

On September 14, Carr informed the Principal that Carr planned to file a formal complaint. The Principal told Carr that Carr could not file a formal complaint. Carr said the union would support his complaint. The Principal said the union could not become involved in the matter. Carr ended the conversation. On September 17, Carr filed a formal sexual harassment complaint against Godwin and the District.

The District's assistant superintendent interviewed Carr on September 29. Carr's union representative also attended the interview. During the interview, the assistant superintendent said a decision had been made regarding Carr's complaint. On October 2, the District sent Carr a letter reflecting "it did not find sufficient evidence backing-up CARR's allegations." The District did not provide "point-by-point factual bases as to why they concluded insufficient of evidence [*sic*]."

On October 7, a meeting occurred with Carr, Carr's union representative, Carr's union president, and the District's superintendent. during the meeting, the superintendent said, " '[T]his investigation is ongoing' pertaining to the formal complaint." Also during the meeting, the superintendent concluded Godwin "committed sexual harassment against [Carr]."

On October 13, Carr entered Godwin's classroom in order to clean it. Carr spoke to Godwin in a polite manner. Godwin rolled her eyes and frowned at Carr. On November 3, the District sent Carr a letter reflecting the school board upheld the superintendent's prior decision, which found Carr's complaint lacked evidentiary

support. On November 4, while Carr was unplugging a vacuum, Godwin walked toward Carr in a lunging manner. Carr moved out of Godwin's way.

On November 5, Carr spoke to the Principal. The Principal said he would investigate Carr's sexual harassment complaint. Carr declined. On November 6, Carr filed a retaliation complaint with the District against Godwin. On November 8, the California Department of Fair Employment and Housing issued Carr a right to sue letter. On December 3, the District sent Carr a letter reflecting there was insufficient evidence to support his retaliation complaint.

In January 2016, the District's director of maintenance and operations directed Carr's immediate supervisor to swap Carr's cleaning assignment for another custodian's cleaning assignment. The assignment swap resulted in Carr having more work. For example, Carr had to clean "bigger, filthier restrooms" and work "an additional one hour to 2.5 hours." The District did not increase Carr's pay after the assignment swap.

On February 22, an assistant principal told Carr that Cindy Gonzales, an employee at the school, "said 'Fuck You!' " in regard to Carr. Carr approached Gonzales and asked why she would say such a thing. Gonzales denied the allegation. Carr asked the assistant principal why he lied. The assistant principal "laughed and said he was kidding."

On May 24, due to the hostile work environment, Carr requested his supervisor move him off-site. Carr's supervisor granted the request for the following school year—starting on August 10. In late 2016, due to the mental anguish caused by the

hostile work environment, Carr sought mental health treatment. Carr was prescribed anti-depressants and told to take a three-month stress leave from work.

Carr's first cause of action was for sexual harassment against the District and Godwin. Carr alleged, "The actions of . . . Godwin, teacher at [the] District, toward . . . CARR, her co-employee, as described herein, created a hostile work environment which materially altered [Carr's] working conditions and which constitutes sexual harassment in violation of California Government Code § 12940(j)."

Carr's second cause of action was against the District for failing to prevent the sexual harassment. Carr alleged, "As described above, [the District] received multiple written and oral complaints, from Carr, pertaining to . . . Godwin's September 2, 2015 sexual harassment against [Carr]. Despite these complaints, [the District] failed to adequately investigate . . . Godwin's conduct when warned about her, failed to take all reasonable steps to prevent her from harassing CARR, and did not investigate or discipline her in response to [Carr's] complaints. [The District] failed to take all reasonable steps necessary to prevent harassment from occurring in violation of [Government Code section] 12940(k)."

Carr's third cause of action was for retaliation, and it was brought against the District. Carr alleged, "On multiple occasions, . . . CARR complained about . . . Godwin's sexual harassment toward and retaliation against him. In response to his complaints, his work duties increased without [a] commensurate rise in pay, while his fellow custodial colleague, [with whom he swapped shifts], saw his work duties

reduced; . . . Godwin's attempted to [*sic*] intimidate [Carr]; and Rivera Middle School Assistant Principal McDonald engaged in [a] cruel prank against CARR."

Carr sought compensatory damages, punitive damages, costs including attorney's fees, interest, and any other proper relief.

Carr attached, to the SAC, his September 17, 2015, written complaint to the District. In the written complaint, Carr wrote, "On Wednesday, September 2, 2015 at approximately 2:00 p.m. in the midst of vacuuming [the] quad I walked into a loud conversation between two teachers. Mrs. Godwin was yelling '*He's a fucking pussy*.' I stopped and looked at her and we made eye contact instead [o]f Mrs. Godwin apologizing she yelled it out again, '*He's a fucking pussy*', this time laughing. The other teacher Mrs. Nicholls did not say anything."

B. DEMURRER

The District and Godwin (collectively "defendants") demurred to the SAC. Defendants began with the sexual harassment cause of action. Defendants asserted the SAC reflected that Carr walked into Godwin's classroom while Godwin was speaking to Nicholls. Carr overheard Godwin say, "He's a fucking pussy," about an unknown person. Defendants asserted there was nothing indicating Godwin was speaking about Carr when she made the comment. For example, she did not use the words "You are." Defendants argued that overhearing a crude remark is not severe harassment, and one remark is not pervasive harassment.

Defendants asserted the cause of action for failing to prevent harassment did not state sufficient facts because an act/acts of harassment had not been sufficiently pled.

Defendants contended the cause of action for retaliation failed because the swapped cleaning assignment and delayed transfer did not materially affect the terms, conditions, or privileges associated with Carr's employment. Defendants asserted that Carr failed to allege that the changes had an "adverse effect on his hours, his pay, his promotional opportunities, or anything else."

Carr filed an opposition to the demurrer, but it is not included in the record on appeal. Defendants filed a reply to Carr's opposition, but the reply is not included in the record on appeal.

C. JUDGMENT

On September 14, 2017, the trial court held a hearing on defendants' demurrer. The trial court said, "So the conduct is—consists of three items[:] one is a statement, one is an eye roll, and one is an attempted bump that didn't happen." The court said, "The comment could merely be interpreted as [a person being] weak as opposed to some sort of sexual comment, but even if you considered it as sexual harassment, it was only one act, and that certainly does not constitute severe and pervasive. [¶] The other one, eye rolling, has nothing to do with sexual harassment. And [the] attempted bump is inconsequential." The court concluded the alleged sexual harassment "was not severe or pervasive." In regard to the second cause of action, the trial court explained, "If there is no harassment, then . . . there can be no failure to prevent."

As to the retaliation cause of action, the trial court said, "[P]laintiff has not shown an adverse action related to filing the complaint." Carr argued that requiring him to clean "additional bathrooms and a greater space was clearly retaliation based on his

complaint, and it happened in such a timeframe that it must be construed as retaliation." Defendants asserted, "He had to clean more toilets than he did before. He didn't have to work longer shifts, there's no allegation that he had worked longer shifts or was demoted or lost pay or that this change has any effect on his ability to be promoted. It's just not there."

The trial court explained that case law reflects there is not retaliation "without a demotion, reduction in pay, loss of benefits, change in title, [or a] change in job responsibilities." The trial court sustained the demurrer without leave to amend.

DISCUSSION

A. STANDARD OF REVIEW

"In reviewing an order sustaining a demurrer, we examine the operative complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory." (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162.) We assume the facts alleged in the complaint are true for the purpose of reviewing the ruling on the demurrer. (*Betancourt v. Storke Housing Investors* (2003) 31 Cal.4th 1157, 1162-1163.)

B. SEXUAL HARASSMENT

1. *CONTENTION*

Carr contends he adequately pled his sexual harassment cause of action. (Gov. Code, § 12940, subd. (j).)

2. *LAW*

"A hostile work environment sexual harassment claim requires a plaintiff employee to show: (1) he or she was subjected to unwelcome sexual advances, conduct or comments; (2) the harassment was based on sex; and (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment." (*Lewis v. City of Benicia* (2014) 224 Cal.App.4th 1519, 1524 (*Lewis*).)

3. *HARASSMENT BASED ON SEX*

"To prove sexual harassment, a plaintiff must show he or she suffered discrimination because of sex. [Citations.] ' " '[T]he critical issue . . . is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.' " [Citation.]' [Citation.] A [Fair Employment and Housing Act (FEHA)] plaintiff must show ' " 'that gender is a substantial factor in the discrimination, and that if the plaintiff "had been a [woman then he] would not have been treated in the same manner." ' [Citation.]" [Citations.] Accordingly, it is the disparate treatment of an employee on the basis of sex . . . that is the essence of a sexual harassment claim.' " (*Lewis, supra,* 224 Cal.App.4th at p. 1525.)

Carr has failed to plead facts reflecting Godwin and the District treated female employees differently than Carr. For example, Carr does not allege how Godwin treated female coworkers at the school. Moreover, Carr pled that Godwin did not trust Carr. No facts were alleged explaining that the lack of trust was due to Carr being a

male. In Carr's appellant's opening brief, he asserts, "Here, the motivation for creating such an environment need not be more than Ms. Godwin's dislike for Mr. Carr." That assertion is incorrect. Godwin's alleged mistreatment of Carr must be based upon disparate treatment on the basis of sex. (*Lewis, supra,* 224 Cal.App.4th at p. 1525.)

To the extent one could interpret Godwin's comment—" 'He's a fucking pussy!' "—as being about Carr, there are no allegations indicating the comment was made because Carr was male, and that Godwin would not have made the same comment about a female coworker. In sum, because Carr has failed to allege disparate treatment on the basis of sex, his sexual harassment cause of action fails.

Carr contends using the term "pussy" constitutes harassment on the basis of sex. Carr supports this assertion with a citation to *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228. In *Taylor*, "[s]everal times a day, [a supervisor] called [the plaintiff] a 'queer,' 'faggot,' 'homo,' and 'gay porn star.' " (*Id.* at p. 1234.) "[The plaintiff] protested to [the supervisor] that he was not a homosexual and that he had a girlfriend. [The supervisor] 'laughed and . . . called [the plaintiff] a pussy [and told him to] get back to work.' " (*Ibid.*)

The appellate court explained, in discussing the case of *Singleton v. United States Gypsum Company* (2006) 140 Cal.App.4th 1547, " '[Plaintiff] recognized, as would any reasonable heterosexual male, that [his coworkers] targeted [his] heterosexual identity, and attacked it by and through their comments. [¶] . . . [G]iven that [the coworkers] had targeted [plaintiff's] identity as a heterosexual male, it is axiomatic that they would treat women 'differently,' i.e., not attack them for the same reason. It follows that the

harassment was "because of sex," i.e., it employed attacks on [the plaintiff's] identity as a heterosexual male as a tool of harassment.' " (*Taylor*, *supra*, 222 Cal.App.4th at p. 1238.)

Carr fails to explain how the use of the term "pussy" in the instant case is analogous to the use of the term pussy in *Taylor*/*Singleton*. Carr fails to explain what context in this case indicates that "pussy" was used because Carr is a man and would not be used against a woman. In *Taylor*/*Singleton* the other remarks made to the plaintiff provided context reflecting a belief the plaintiff was homosexual. Carr has not presented similar allegations that would provide context or meaning to Godwin's alleged use of the term "pussy." Accordingly, because it is unclear why the instant case is analogous, we find Carr's reliance on *Taylor*/*Singleton* to be unpersuasive.

4. *SEVERE OR PERVASIVE*

We now turn to the issue of severity or pervasiveness. In regard to the severity and pervasive nature of the alleged harassment, the allegations " 'must be evaluated in light of the totality of the circumstances: "[W]hether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." ' " (*Lewis*, *supra*, 224 Cal.App.4th at p. 1529.)

Carr alleged three acts by Godwin: (1) Godwin twice saying "He's a fucking pussy"; (2) Godwin rolling her eyes and frowning at Carr; and (3) Godwin walking

toward Carr in a lunging manner as though she might bump into him. In regard to Godwin's comment, it appears from Carr's SAC that Carr entered the classroom during a conversation between Godwin and Nicholls. Therefore, assuming Carr's allegations are true, the reasonable inference is that Godwin was not speaking to Carr or about Carr. Nevertheless, assuming Godwin was speaking about Carr, it is an isolated comment.

Godwin's frown and eyeroll are an expected reaction to being approached by Carr, who had made a formal complaint against Godwin. There is nothing indicating that the frown and eyeroll were harassment. Next, Godwin walked toward Carr in a lunging manner. Carr describes the threat as creating the possibility of Godwin "bump[ing] into him." Carr does not allege Godwin was going to knock him over or push him.

In sum, the three acts alleged by Carr are minor. When viewed together, in totality, the three instances remain minor. They do not amount to severe or pervasive conduct that would create a hostile or abusive work environment. Accordingly, the trial court did not err by sustaining the demurrer.

Carr asserts a single comment can create a hostile work environment. To support this assertion, Carr relies upon *Dee v. Vintage Petroleum, Inc.* (2003) 106 Cal.App.4th 30. In *Dee*, the appellate court wrote, "In many cases, a single offensive act by a coemployee is not enough to establish employer liability for a hostile work environment. But where that act is committed by a supervisor, the result may be different." (*Id.* at p. 36.) The court continued, "In other jurisdictions a single racial slur by a supervisor may also create a hostile work environment." (*Ibid.*) In analyzing the

case, the appellate court wrote, "Dee's evidence showed that Strickland called her a 'bitch' and 'constantly' used the word 'asshole.' " (*Id.* at p. 37.)

Carr alleges that Godwin was a teacher, not his supervisor. Because Godwin was not Carr's supervisor, we are not persuaded that one incident of Carr saying "pussy" created a hostile work environment. Further, Carr has not alleged that Godwin constantly used the word "pussy." Accordingly, we are not persuaded by Carr's reliance on *Dee*.

C. FAILURE TO PREVENT HARASSMENT

Carr contends he adequately pled a cause of action for failure to prevent harassment. (Gov. Code, § 12940, subd. (k).) "[C]ourts have required a finding of actual discrimination or harassment under FEHA before a plaintiff may prevail under [Government Code] section 12940, subdivision (k)." (*Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 925, fn. 4.) As explained *ante*, Carr did not adequately plea sexual harassment. Therefore, Carr's cause of action for failing to prevent harassment (Gov. Code, § 12940, subd. (k)) also fails.

D. RETALIATION

1. *CONTENTION*

Carr contends he adequately pled a cause of action for retaliation. (Gov. Code, § 12940, subd. (h).)

2. *LAW*

"Past California cases hold that in order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) he or she engaged in a 'protected

activity,' (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action." (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042.)

3. *PROTECTED ACTIVITY*

First, in regard to protected activity, "[i]t is well established that a retaliation claim may be brought by an employee who has complained of or opposed conduct that the employee reasonably believes to be discriminatory, even when a court later determines the conduct was not actually prohibited by the FEHA." (*Yanowitz, supra,* 36 Cal.4th at p. 1043.) Carr's acts of filing complaints with the District were protected activities. Our conclusion that Carr failed to adequately plea harassment does not alter the protected status of the activity. (*Id.* at pp. 1043-1044.) Thus, Carr adequately pled the protected activity element by alleging that he filed administrative complaints.

4. *ADVERSE ACTION*

Second, "in order to establish . . . a retaliation claim, 'an employee must demonstrate that he or she has been subjected to an adverse employment action that materially affects the terms, conditions, or privileges of employment . . . .' " (*Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1168.) " ' "The determination of whether a particular action or course of conduct rises to the level of actionable conduct should take into account the unique circumstances of the affected employee as well as the workplace context of the claim." [Citation.] Such a determination "is not, by its nature, susceptible to a mathematically precise test." [Citation.] "Minor or relatively trivial adverse actions or conduct by employers or

fellow employees that, from an objective perspective, are reasonably likely to do no more than anger or upset an employee cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment and are not actionable, but adverse treatment that is reasonably likely to impair a reasonable employee's job performance or prospects for advancement or promotion falls within the reach of the . . . provisions of section[] . . . 12940(h)." ' " (*Light v. Department of Parks & Recreation* (2017) 14 Cal.App.5th 75, 91-92.)

Carr alleged that, after he filed his complaints, his work assignment changed, which resulted in him cleaning larger and messier restrooms. Due to the assignment change, Carr had to work "an additional one hour to 2.5 hours." Carr further alleged that the District "did not increase Carr's pay." Carr's allegation that he had to work more hours every week for the same amount of pay could be interpreted as materially affecting the terms, conditions, or privileges of employment because pay for time worked is a fundamental aspect of one's job. (See generally *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1148 ["California courts have long recognized wage and hours laws 'concern not only the health and welfare of the workers themselves, but also the public health and general welfare' "].)

5. *CAUSATION*

Third, "[t]he requisite 'causal link' may be shown by the temporal relationship between the protected activity and the adverse employment action." (*Light*, *supra*, 14 Cal.App.5th at p. 91.) Carr filed his first formal complaint with the District on September 17, 2015. Carr filed his second formal complaint with the District on

November 6, 2015. In January 2016, the District's director of maintenance and operations instructed Carr's supervisor to reassign Carr to a different cleaning assignment.

Carr's allegation, that the reassignment occurred within a two- to three-month period of Carr filing his second complaint, could reasonably support a finding that Carr was reassigned because he filed two administrative complaints. Given that this case is at the demurrer stage, the pleading of a two- to three-month period is a sufficient allegation to suggest causation. (*Flait v. North American Watch Corp.* (1992) 3 Cal.App.4th 467, 478 [a few months could be sufficient for causal connection on summary judgment];cf. *Clark County School Dist. v. Breeden* (2001) 532 U.S. 268, 273-274 [three-to-four month period could be insufficient].)[1]

6. *CONCLUSION*

In sum, Carr sufficiently pled a cause of action for retaliation against the District. We will reverse the order sustaining the demurrer as it pertains to the retaliation cause of action.

7. *DISTRICT'S CONTENTION*

The District contends, "For the first time on Appeal, [Carr] is now alleging that his switch to a new cleaning route 'required two additional hours of daily work, without a pay raise.' [Citation.] This allegation in Appellant's Opening Brief is a gross

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[1] At the hearing on the demurrer, Carr's attorney asserted, "It only requires that he complained about it, which he did. Within two weeks he was given a new assignment." In reading the SAC, we see a two- to three-month period of time alleged—not a two-week period of time.

misrepresentation of the actual allegations contained within the FAC and SAC." Contrary to the District's assertion, Carr alleged, in the SAC, that he was required to work "an additional one to 2.5 hours" per shift and that he did not receive "an increase in pay." Accordingly, because the record contradicts the District's assertion, we find the District's argument to be unpersuasive.

8. *EXHAUSTION*

In reversing the sustaining of the demurrer as it relates to the retaliation cause of action, we have encountered an issue unbriefed by either party—the record does not include an administrative complaint or right to sue letter concerning the increased work hours and lack of pay increase.

"Under the FEHA, the employee must exhaust the administrative remedy provided by the statute by filing a complaint with the Department of Fair Employment and Housing (Department) and must obtain from the Department a notice of right to sue in order to be entitled to file a civil action in court based on violations of the FEHA. [Citations.] The timely filing of an administrative complaint is a prerequisite to the bringing of a civil action for damages under the FEHA." (*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 492.) In order for the plaintiff to have exhausted his/her administrative remedies, the issues raised in the court-filed complaint cannot exceed the scope of the issues that were raised in the Department-filed complaint. (*Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 153-154.)

" ' "The administrative exhaustion requirement is satisfied if the allegations of the civil action are within the scope of the [Department] charge, any [Department]

investigation actually completed, or any investigation that might reasonably have been expected to grow out of the charge. Thus, the judicial complaint may encompass any discrimination 'like and reasonably related to' the allegations of the [Department] charge." ' " (*Wills v. Superior Court, supra,* 195 Cal.App.4th at pp. 154-155.)

The record includes Carr's administrative complaints filed on September 17, 2015, and November 16, 2015. The record also includes a right to sue notice dated November 8, 2015. In the SAC, Carr alleged his work assignment changed in January 2016. There are no administrative complaints or right to sue letters dated in or after January 2016. Carr does not allege, in the SAC, that he filed a third administrative complaint or received a second right to sue letter in or after January 2016.

Whether the facts supporting the retaliation cause of action against the District are " 'like and reasonably related to' " the facts in Carr's complaint(s) against Godwin is an issue we leave to another day. The issue was not argued in the trial court, and it has not been argued in this court. (See Gov. Code, § 68081 [unbriefed issue cannot be decisive].)

E. LEAVE TO AMEND

" 'Where the complaint is defective, "[i]n the furtherance of justice great liberality should be exercised in permitting a plaintiff to amend his complaint, and it ordinarily constitutes an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility that the defect can be cured by amendment. [Citations.]" ' [Citations.] This abuse of discretion is reviewable on appeal 'even in the absence of a request for leave to amend' [citation], and even if the plaintiff does not

claim on appeal that the trial court abused its discretion in sustaining a demurrer without leave to amend." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 970-971.)

In Carr's appellant's opening brief and appellant's reply brief, he does not explain how he will amend the SAC to cure the harassment causes of action. At the hearing on the demurrer, Carr did not explain how he would amend the SAC to properly plead the harassment causes of action. The record does not include a copy of Carr's opposition to the demurrer. Because we have no information concerning how Carr might cure his failure to plead sufficient facts, we conclude the trial court did not err by denying leave to amend.

DISPOSITION

The judgment and order sustaining the demurrer are reversed as to the retaliation cause of action (third cause of action). In all other respects, the judgment and order sustaining the demurrer are affirmed. The parties are to bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3).)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
Acting P. J.

We concur:

CODRINGTON
J.

RAPHAEL
J.